

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

JASON BISHOP,
Petitioner,

vs

WARDEN, CORRECTIONAL
RECEPTION CENTER,¹
Respondent.

Case No. 1:13-cv-227

Beckwith, J.
Litkovitz, M.J.

**REPORT AND
RECOMMENDATION**

Petitioner, an inmate currently incarcerated at the Correctional Reception Center in Orient, Ohio, filed a petition for a writ of habeas corpus on February 25, 2013. (Doc. 1). This matter is before the Court on petitioner's unopposed motion to withdraw his petition without prejudice. (Doc. 15).

In the motion, petitioner indicates that he "has failed to exhaust all available State remedies." *Id.* He asks the Court to dismiss his habeas petition without prejudice, so that he may exhaust his state court remedies.

Rule 11 of the Rules Governing Section 2254 Cases in the United States District Courts, 28 U.S.C. foll. § 2254, provides: "The Federal Rules of Civil Procedure, to the extent they are not inconsistent with these rules, may be applied, when appropriate, to petitions filed under these rules." Fed. R. Civ. P. 41(a)(2) provides that the Court may dismiss an action "at the plaintiff's instance" upon "such terms and conditions as the court deems proper."

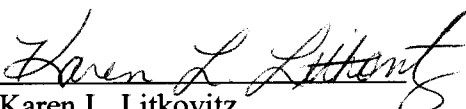
Pursuant to Fed. R. Civ. P. 41(a)(2), the undersigned recommends that petitioner's

¹ On March 25, 2013, petitioner filed a notice of change of address, informing the Court that he had been transferred to the Correctional Reception Center. (Doc. 9). Because it appears that the Warden of the Correctional Reception Center currently has custody of petitioner, the Warden is the proper party respondent in this action. *See* Rule 2, Rules Governing Section 2254 Cases in the United States District Courts, 28 U.S.C. foll. § 2254.

motion to withdraw his petition (Doc. 15) be **GRANTED**, and that the petition for writ of habeas corpus filed under 28 U.S.C. § 2254 (Doc. 1) be **DISMISSED** without prejudice.

IT IS SO RECOMMENDED.

Date: 5/14/13


Karen L. Litkovitz
United States Magistrate Judge

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NOTICE

Pursuant to Fed. R. Civ. P. 72(b), **WITHIN 14 DAYS** after being served with a copy of the recommended disposition, a party may serve and file specific written objections to the proposed findings and recommendations. This period may be extended further by the Court on timely motion for an extension. Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendation is based in whole or in part upon matters occurring on the record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon, or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party's objections **WITHIN 14 DAYS** after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).

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